

IMPLEMENTATION OF LEGAL PROTECTION ON WOMEN VICTIMS OF DOMESTIC VIOLENCE

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Abstract

The laws and regulations have the provisions for illegal acts or crimes which include domestic violence. Domestic violence is a form of special crime. This study examines the form than implementing legal protection for women victims of domestic violence based on the criminal justice system in Indonesia as well as how the obstacles that arise in this regard. The existence of Law Number 23 of 2004 concerning the elimination of domestic violence is expected to be able to provide legal protection for victims of domestic violence significantly, in this case are women. The results showed that the decision Number: 519 K/Pid.Sus/2020 as an example of the implementation of legal protection for wives as victims is appropriate. In relation to the obstacles that arise, among others, law enforcement officers who have various understandings regarding domestic violence, difficulties for legal officers in implementing Law No. 23 of 2004, lack of courage to report incidents of domestic violence from victims, and difficulties in proving the problem of domestic violence.

Keywords: Domestic violence, protection, implementation, women

INTRODUCTION

Protection of family, honor, self and property that is in one's power as well as a right to protection from all kinds of intimidation as well as fear and the right to a feeling of security to act or not to act are part of human rights which are described in Article 28G paragraph 1 of the Constitution. 1945. Referring to the provisions of the regulation that the state has guaranteed protection for its people, including the protection in the above-mentioned aspects which with the development and proper reform of the law to make it happen, which results in legal restoration, is also related to strafrecht where the existence of values in the community is for considered.

The smallest community of a society, consisting of one or more people who live together in a place to live and share shelter and food is called a household or family. Everyone certainly

wants a happy and peaceful household. It is very important to pay attention to its development and grow it in building a complete, safe, and happy household. The harmony and integrity of the household will be disturbed if a person cannot control his attitude and behavior. So that in the end there is domestic violence that damages the security, happiness, and integrity of the household or family. Referring to this, there is also injustice and insecurity for people in that field. The state is obliged to implement and enforce prevention, enforcement and prosecution of perpetrators as well as protection of victims to prevent this from happening.

Wives, children, husbands, people who have family ties through blood relations, marriage, breastfeeding, parenting, guardianship, and someone who works assisting in that scope also lives in it are part of what must be protected as described in Article 2 of the Law. -Law Number 23 of 2004.

Domestic Violence (KDRT) is also considered as part of private law so as to produce a solution that is more emphasized to be resolved by peaceful means or deliberation. The case of domestic violence, which has been considered a private matter or a myth, has now become a public problem. The enactment of Law Number 23 of 2004 made cases of domestic violence a dominant public issue. Law Number 23 of 2004 concerning the Elimination of Domestic Violence shows that the Indonesian government wants perpetrators of domestic violence as soon as possible to be sanctioned or prosecuted in accordance with applicable law.

Domestic violence is a very specific problem because domestic violence can occur in various strata of society without knowing boundaries, starting from low-status people to high-status people.

Referring to the data that has been obtained from Tempo.Co, Komnas Perempuan at least wrote that there were 299,911 related to violence against women throughout 2020. In this regard, the decline was significant when viewed last year's report where it was written that the number of cases reached 431,471. Referring to the reports and data that have been obtained, the following evidence is obtained that the most dominant ones here are forms of physical violence

which the percentage is 31%. Wives are the majority of victims of Domestic Violence where husbands are the majority of perpetrators.

Law No. 23 of 2004 on the Elimination of Domestic Violence has provided and fully guaranteed to protect all victims in this case, and has been implemented with reference to the principle of honorable human rights, gender equality and justice, non-discrimination. and rechtsbecherming of victims, and there is an intention in detaining and preventing various domestic violence in a prosperous and harmonious manner. With the existence of a related law, it is desirable to be able to provide legal protection guarantees for the scope mentioned, especially women, who in this case are often victims. By paying attention to the increasing number of women as victims of the problem of domestic violence, so that this problem becomes a problem that is considered serious so that it needs to be addressed immediately to prevent and enforce legal protection for women victims of domestic violence.

Referring to the background description above which we have outlined about the problems that often occur in the community, we are interested in research to find out about how the implementation of legal protection for women victims of domestic violence as outlined in the journal entitled "application of legal protection for women victims of internal violence. Household (Study of Decision Number 519/K/Pid.Sus/2020)".

Here is a formulation of the problems that will be examined in this study how to Apply Legal Protection for Women Victims of Domestic Violence Referring to Law no. 23 of 2004 (Study of Decision Number 519/K/Pid.Sus/2020) and What are the Obstacles encountered in the Implementation of Legal Protection for Women Victims of Domestic Violence Referring to Law No.23 of 2004 (Study of Decision Number 519/K/Pid.Sus/2020)?

METHODOLOGY

The following research uses a normative juridical method, namely where the research is based on legal materials and references where the theory and concepts of the references used in

this study are examined which relate to the fundamentals of the laws and regulations related to this research.

RESULT AND DISCUSSION

1. Application of Legal Protection for Women Victims of Domestic Violence Referring to Law no. 23 of 2004 (Study of Decision Number 519/K/Pid.Sus/2020)

The term protection, referring to the provisions of Article (1) number (4) of Law Number 23 of 2004, is an entire effort which is useful in providing a feeling of freedom from fear for the victim which is carried out by various parties such as the prosecutor's office, family, social institutions, advocates, courts, even the police in temporary form or also based on court decisions.⁶ All efforts to fulfill the rights of every victim that should be carried out by the government are the definition of protection when referring to Law no. 13 of 2006 which regulates the Protection of Witnesses and Victims. The Judicial Body in the General Courts Environment is the body that handles legal protection in Indonesia.⁷ The Judicial Body in the General Courts is the body that handles legal protection in Indonesia.⁸

For the people, legal protection is a universal concept that has meaning to be embraced and implemented by every country that prioritizes itself as a state of law.⁹ Legal protection means a subjective condition that emphasizes the emergence of propriety on the subject's person so that he can quickly get power, for the continuity of the presence of legal subjects who are given legal coverage, so that their power is systematic in terms of the procedures for taking political or economic decrees, especially in the distribution of resources. , both in the individual class as well as structurally, if you refer to the opinion of Philipus M.Hadjon. Based on its relation to legal protection, it means that the applicable law is related to the law as a system.¹⁰

The principle of equality before the law as one of the identities of the rule of law is one part of the principle of legal protection. Likewise, victims are required to receive legal services in the form of legal protection.¹¹ Legal protection is the protection given to legal subjects in

preventive or repressive instruments, both verbal and nonverbal.¹² Legal protection can be divided into two, when viewed from an outline, namely:

- a. Juridical protection which includes the fields of public and civil law.
- b. Non-juridical protection which includes the social, health, education fields.

It has been described in Law Number 23 of 2004 concerning the Elimination of Domestic Violence that all acts committed against a person, especially a woman, where the result of the action brings suffering as well as physical, psychological, sexual suffering as well as neglect in the household or deprivation of liberty against the law in that area.¹³

All kinds of violence, especially domestic violence, namely crimes concerning humanity in terms of dignity and forms of human rights violations as well as discrimination which really needs to be eliminated is the juridical basis for the formation of Law No. 23 of 2004. Meanwhile, the sociological basis which has been determined UU no. 23 of 2004 concerning the Elimination of Domestic Violence is due to the sharp phase of domestic violence perpetrated by the perpetrator or husband or wife, where in this case the criminal sanctions are so low that it causes injustice to the victim, especially the wife.¹⁴ The absence of a similar paradigm in law enforcement officers regarding the protection of victims of domestic violence is another sociological foundation.¹⁵ The National Commission on Women describes an annual record of violence against women which proves the number of cases has drastically increased.¹⁶ UUPKDRT then expands the definition of violence, where violence is not only limited to actions that result in physical suffering, but also psychological suffering.¹⁷ Domestic violence, part of the offense that can be sanctioned in the form of imprisonment or confinement as well as the consequences received for the victim.¹⁸

Most of the perpetrators of domestic violence or victims of domestic violence are reluctant to leave their partners and still choose to live with their partners even though they often experience severe violence and suffering. We often know that the perpetrators of violence are not strangers, but are none other than people who are very close and dear to their victims. When

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violence occurs not in an isolated place, the victim assumes that this is normal. Another possibility is that the victim is afraid of the perpetrator, where this feeling of fear is used by the perpetrator to control the behavior of the victim as a whole (total).¹⁹

Violence against women is generally only regulated in the Criminal Code, which is located under the chapter on crimes against decency. However, when referring to its development, violence against women has increased significantly until it finally gets an abundance of affection because of its broad impact and nature for the general public. Realizing that there are complex issues related to domestic violence, especially against women, in 2004 the Law on the Elimination of Domestic Violence was passed which in general is able to guarantee legal protection for women in obtaining their legal rights.

In theory, Law no. 23 of 2004 concerning the Elimination of Domestic Violence has guaranteed special protection for the most vulnerable groups in the household sphere, namely women and children. Where it is considered vulnerable to neglect the position of children and women who are harmed and considered unprofitable. So, vulnerable children and women are children and women who hold a high risk to bear and also get problems or problems in their development, both psychologically, socially, and physically.²⁰ However, in practice, this actually criminalizes women as victims of domestic violence.²¹ Law enforcement officials who do not monitor children, husbands, and wives in this area and relatives as victims in establishing laws are the cause of this occurrence.²² This offense is judged that general rumors can be based on facts seen from the stipulation of a number of international legal instruments based on this phenomenon, which are as follows:

- a. Vienna Declaration and Programme of Action (1993)
- b. Convention on the Elimination of All Form of Discrimination Against Women (1979)
- c. Declaration on the Elimination of Violence Against Women (1993)
- d. Beijing Declaration and Platform for action (1995)²³

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The offense in the discussion is an act against human rights and an illustration of the uselessness of women in the eyes of their husbands and the neglect of the strata and dignity of women whose human rights should be guaranteed.²⁴ Prior to the promulgation of the relevant regulations, this offense was not assessed as a specific offense.²⁵ It has been emphasized that victims of domestic violence have the right to be protected by related parties such as social institutions, police, courts, families, advocates, prosecutors, or other related parties temporarily or based on a decision from the Legal Council, when referring to Law No. . 23 of 2004 concerning the Elimination of Domestic Violence. In addition, medical recovery reparations, specific work related to the confidentiality of victims, legal aid as well as social institutions that guarantee assistance, for all classes of investigation procedures which are synchronous in which the determination of laws and regulations, and guarantees of mental direction are entitled to be obtained by victims.²⁶

Since the enactment of the UUPKDRT, there has been an increase in the reporting of domestic violence problems. This is indicated as the emergence of human courage in revealing things that were initially considered taboo, or it can also be assessed as the emergence of legal understanding in the community regarding the protection of their human rights and obligations as residents.²⁷ Legal protection is all the power taken by groups to deal with violence against women. The group that is considered capable of guaranteeing legal protection for women, which can be the victim, can be anyone, the group which is intended to be able to provide a sense of security to the victim.²⁸

Consultation on problem solving, advocating for settlement of cases, and providing facilities in the form of JPPA and PPTK, as well as PPT are part of the legal protection program that is usually applied in an area.²⁹ Law enforcement officers play a role in implementing and guaranteeing legal protection regarding women who are victims, referring to Law Number 23 of 2004, among others :

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- a. The role of the police is regulated in articles 16 to 20, article 26, article 27, article 35 and article 36 which provide temporary protection as well as education for the victims concerned.
- b. The role of the prosecutor is regulated in article 10 letter (a).
- c. The role of the advocate is regulated in article 25 letters (a), (b), and (c) which provides relevant face-to-face meetings and also coordinates with related parties.
- d. The role of the court is regulated in Article 28 to Article 34, Article 37, and Article 38, issuing a letter of stipulation for a protection order.

Based on the context in the protection related to victims, preventive and repressive efforts have been made by the population as well as the government, for example providing protection or inspection from all kinds of risks and intimidation that can endanger the lives of victims, providing adequate medical and legal assistance.³⁰ The law of formation regulates problems in particular, to the point of placing *lex specialis* elements.³¹ In some cases, responsive and rapid action is very useful to protect victims and prevent further losses. So, based on this, the UUPKDRT has required the police to provide protection for victims, for example, temporary protection for victims within a period of 1 x 24 hours which can be counted from the time the exposure is known and received. Until within a period of 1 x 24 hours that can be counted from the time temporary protection is obtained, the police are required to request a letter of determination of a protection order from the court.³²

In order to find out how the implementation or application of legal protection for women or wives, it can be seen in the case decision Number 519 K/Pid.Sus/2020, where the decision is handed down by the judge on the defendant if it can be proven that the defendant committed an act of domestic violence, as described above. in Law Number 23 of 2004 Article 44 paragraph (1) concerning the Elimination of Domestic Violence.

In the author's view, this is appropriate so that the author considers that it is true and appropriate. This is because the provisions for the crime of violence that have been determined, namely Domestic Violence in the decision 519 K/Pid.Sus/2020 have coincided and are in

accordance with the UUPKDRT, namely Law no. 23 of 2004. Based on the case, it is appropriate that the case includes domestic violence because the victim and the perpetrator are bound in a legal marriage as wife and husband. So the application of the provisions of this case is where this case has referred to its application to Law no. 23 of 2004 concerning the Elimination of Domestic Violence. In the following, the author describes the elements which are considered by the judge in the sentencing in detail one by one referring to the facts that have been disclosed in the trial, as follows:

1. **Each Person**

That the meaning of "everyone" is a legal subject supporting eigendom and the necessity of being able to account for his actions, in which case the defendant is a legal subject.

Considering that in the trial it was found that the legal accuracy was that the Defendant was able to undergo the trial process properly, was able to state his identity completely and in accordance with what was stated in the indictment, and was able to answer all questions of the Panel of Judges clearly and calmly.

Considering whereas based on the legal facts that have been described, the Panel of Judges has summarized that the Defendant is a legal subject which, in his actions, can be held responsible. Then based on this case, the error object does not exist.

2. **Doing acts of physical violence**

Whereas physical violence is an act which causes pain, falls ill or is seriously injured (vide Article 6 of the Domestic Violence Law). Therefore, it is found that the construction of physical violence in article 44 paragraph (1) is if a husband is committed to his wife or vice versa so that the demands are found for actions that cause pain and cause obstacles as well as abnormalities in the performance of position work.

The dispute which led to the physical violence between the defendant who was the husband of the victim named SITI ZAENAB. Referring to the considerations above, it is clear that all the elements required by Article 44 paragraph (1) of the Republic of

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Indonesia Law no. 23 of 2004 concerning the Elimination of Domestic Violence has been fulfilled, so that the defendant must be declared guilty legally and convincingly of committing an offense. Thus, the judge's consideration for deciding the decision on the issue of criminal acts of domestic violence, based on witness statements, is also strengthened by the results of Visum et Repertum No. 050/MR/II/2017 that the impact resulted in the victim suffering a laceration to the right thigh and pain in the right shoulder. The bruise did not cause the victim to be seriously injured, fall ill or have problems in carrying out his job, thus this element is not fulfilled according to the law.

In connection with the unproven primary charge, the defendant is required to be acquitted of the primary indictment, then the Panel of Judges will consider the defendant Susidair's indictment, namely the defendant violated Article 44 paragraph (1) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence. Based on the provisions of Article 51 of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, it has been stated that "criminal acts of physical violence as referred to in Article 44 paragraph (4) constitute a complaint offense". Based on the judge's considerations regarding his plea/defense, in essence, the Defendant's Legal Advisor asked the Panel of Judges to grant the defendant leniency on the demands of the Public Prosecutor because the Defendant was considered not to complicate the trial, was civilized, not long-winded, and had never been sentenced in the first place. Regarding the plea/defense, the Panel of Judges considered that the defense which was put forward by the Defendant was only a request for leniency. Therefore, the Panel of Judges does not need to consider the matter specifically, but is only considered to have been considered in terms of which are burdensome as well as mitigating. Based on the accuracy which was obtained in the trial, it turned out that the Judge did not find anything that could allow the defendant to commit an offense. Therefore, the sentence imposed on the defendant is 3 (three) months.

2. Obstacles encountered in the application of legal protection for women victims of domestic violence refer to Law No.23 of 2004 (Study of Decision Number 519/K/Pid.Sus/2020)

- a. Law enforcement agencies such as judges, prosecutors, or police have different interpretations of domestic violence. Some officers argue that if victims of severe physical violence are unable to carry out their daily activities, so that victims who are able to carry out activities are considered to have only experienced mild physical violence.
- b. Law enforcement agencies, especially judges and police, face difficulties in implementing the provisions of Law No. 23 of 2004 concerning the Elimination of Domestic Violence for legal protection of temporary victims and the establishment of protection. The existence of a basis concerning concretization for which the pretext for temporary protection has not been realized does not exist.
- c. The victim's lack of courage to report what happened was driven by shame and fear of being considered to be spreading family disgrace.
- d. Difficulty in proving the issue of domestic violence. Difficulty in proving violence against women as victims whose actions were carried out by people closest to the victim, for example husband, or it could be parents, or relatives.

CONCLUSION

1. The implementation of criminal law in case Number: 519 K/Pid.Sus/202 related offenses which were committed in the realm of the household concerning the husband to his wife. The defendant has been proven legally and convincingly guilty of committing physical violence in the domestic sphere perpetrated by a husband against his wife which did not result in illness or an obstacle in carrying out daily activities. Therefore, the punishment for the defendant is imprisonment for 3 (three) months. An alternative solution that can be proposed to apply legal protection is to immediately manifest an integrated criminal justice system that is fair in the household.

2. Related obstacles include law enforcement officers such as judges, prosecutors, or the police have different interpretations of domestic violence, law enforcement officers especially judges and police face difficulties in implementing the provisions of Law No. report the events he experienced, and the difficulty in proving the domestic violence problem.

Suggestion

Based on the studies that the authors have found and described previously, the suggestions that can be given regarding this research are, to maintain and develop for the better the government actions that have been achieved to provide legal protection, especially for women, as well as for law enforcement officials to equalize their perceptions. related to differences in interpretation of domestic violence, such as the determination of severe and mild physical violence as well as concrete steps to implement protection and prosecution in violence in the domestic sphere, should be more realized, such as in terms of providing protection for victims and taking action against perpetrators.

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